

CHAPTER 13

Administration of Purchase and Delivery Orders for Supplies and Services

This Chapter Presents:

- @ An introduction to the concepts of contract administration and follow-up as they apply to purchase orders and an overview of standard terms and conditions which govern the administration of contracts effected by purchase orders with open market vendors (Section 13A)
- @ Policies and procedures that apply when it is necessary to modify or cancel an order or to terminate a contract effected by a purchase order (Section 13B)
- @ Procedures for follow-up, inspection and acceptance, and end user feedback (Section 13C)
- @ Purchasing Agent responsibilities in the processes of contractor payment and contract closeout (Section 13D)
- @ Issues and procedures that are unique to the administration of delivery orders placed with Federal Supply Schedule and Federal Information Processing Resource contractors (Section 13E)

Cross-References:

- @ Chapter 5 addresses follow-up and administrative steps that apply when ordering from established government sources.
- @ Chapters 7 and 9 contain discussions of contractors' legal obligations with respect to labor and other socioeconomic provisions, and Purchasing Agents' responsibilities for assuring awareness of and compliance with those provisions.

SECTION 13A

ADMINISTRATION IN ACCORDANCE WITH STANDARD TERMS AND CONDITIONS

INTRODUCTION

Although delivery or performance is in the hands of the vendor following award of a purchase or delivery order, the Purchasing Agent continues to have responsibility in seeing that the government receives the products or services needed, and receives them when they are needed.

As discussed in Section 8B, an order becomes a contract when it is accepted by the vendor; the vendor becomes a contractor, and the Purchasing Agent who issued the order becomes the CO responsible for making sure that all of the specific promises or agreements that make up the contract are met; that is, for administering the contract. For this reason, the initial sections of this chapter deal with fundamental points of law and legal remedies which apply to government contracts in general, including those effected by purchase orders. The focus is on administration in accordance with standard terms and conditions.

The latter sections of the chapter consider the day-to-day processes that must take place in seeing an order through from award to completion. Here, record-keeping is a prominent topic, and communication--internal and with vendors, through paper processing and person-to-person--is the key issue.

An exhaustive treatment of the actions and the documentation that may be necessary in contract administration is beyond the scope of this chapter. As each office has its own internal organization, delegation of responsibility, operating procedure, and document flow system, specific and detailed instructions must be provided at the local level. The chapter provides wider orientation and guidance, primarily for Purchasing Agents/COs and also for program personnel who become involved in contract administration because of unique technical expertise.

CLAUSES INCORPORATED BY REFERENCE ON THE AD-838 PURCHASE ORDER

Many of the clauses needed for proper contract administration have been incorporated by revenue on the reverse side of the AD-838 (See Exhibit 8B(i)). The full text of these clauses is found in FAR Subpart 52.2 and AGAR Subpart 452.2. However, subsequent sections of this Chapter deal with the administration of purchase orders in accordance with these clauses.

It should be noted here that when the AD-838 is issued as a delivery order, the order is governed by the clauses contained in the basic contract as well as by those incorporated in the AD-838. Administration in accordance with Federal Supply Schedule contract provisions is covered separately in Section 13E.

OTHER STANDARD CLAUSES WHICH MAY BE USED

It must be noted that FAR 13.302-5 cautions that the purchase order must contain all the applicable required clauses for any particular acquisitions. The Purchasing Agent may choose to include or incorporate by reference such standard clauses as the Changes, Differing Site Conditions, Suspension of Work, and Government Furnished Property clauses. When acquiring construction the clauses described at FAR Subpart 36.5 must be considered. The texts of these clauses are found in FAR Subpart 52.2. Purchasing Agents should consult the solicitation and contract clause matrices at FAR Subpart 52.3 for a complete listing of "required," "required when applicable," and "optional" clauses.

INSPECTION AND ACCEPTANCE CLAUSES

See FAR Subpart 46.3 for prescriptions of FAR clauses applicable for supply contracts and services contracts. For example, FAR 52.246-2 is an inspection of supplies clause while FAR 52.246-4 is tailored specifically for inspection and acceptance of services. The full text of these clauses is contained in FAR Subpart 52.2.

SECTION 13B

MODIFICATION, CANCELLATION, AND TERMINATION

This section addresses considerations and procedures that apply in the handling of orders issued to commercial vendors in the open market. The handling of orders placed against an indefinite delivery contract, such as a Federal Supply Schedule contract, is governed by provisions contained in the basic contract.

Administration of Federal Supply Schedule delivery orders is discussed separately in Section 13E.

MODIFICATION

Modification That May Be Necessary

The need to modify an order arises in connection with both relatively minor administrative issues and more substantial issues.

The Purchasing Agent should modify any order, even when it is correct in substance, if its content is deficient in administrative details due to:

- @ Omission of information;
- @ Typographical error;
- @ Inaccurate reflection of the terms of the solicitation or quotation; or
- @ Change in the government's appropriation data or other internal information.

The intent is to make sure that the order is complete and correct in every detail.

In addition, the government has the right to make changes in the heart of a purchase order quality, delivery, price, or other substantive requirements. Such modifications must be supported by a valid requisition submitted by the requiring activity, as the responsibility for determining the need for a change lies with the initiator of the requirement. Nevertheless, only a person with delegated acquisition authority--a Purchasing Agent/CO--can approve and issue the modification.

How to Modify a Written Order

All modifications of written purchase orders should be made in writing using the AD-838. In describing the modification, the Purchasing Agent should specifically cite each provision to be modified and should spell out both the words or numbers to be deleted and those to be added in their place. The Purchasing Agent must be sure to specifically state how each provision affected by the change is altered. Example:

The above referenced purchase order is hereby modified as follows:

Item 2, Envelopes. Increase quantity from 50 MX to 60 MX.

This increase in quantity increases the total value of the purchase order from \$1,500 to \$1,800.

All purchase orders must be signed by an authorized contracting officer.

The AD-838, when used as the modification form, must be assigned the same number as the basic purchase order, followed by an appropriate entry in the "Sub" block, Block 9. See the NFC Procedures Manual for specific instructions regarding modification of purchase orders.

Need for Contractor Acceptance

Note: The changes clause (FAR 52.243-1) which is incorporated by reference on the AD-838 permits unilateral modification by the government, an action which does not require acceptance by the contractor to be contractually enforceable. Most modifications other than those made pursuant to the authority of the changes clause require written agreement by the contractor.

Distribution

Copies of modifications should be given the same distribution as copies of the original purchase order.

CANCELLATION

In conducting simplified transactions an offer may be withdrawn without liability at any time prior to acceptance. Thus, the Purchasing Agent may, if the situation warrants it, cancel a purchase order (the government's offer to purchase) prior to acceptance without liability on the part of the government. Consequently, it is critical to verify whether or not the vendor may have already accepted the order by beginning performance or by sending a written acceptance notice. (Note: A written acceptance notice is effective when mailed or otherwise reasonably dispatched by the contractor.) If the order has been accepted, the government may not legally cancel it - to do so could be considered a breach of contract and would subject the government to suit for damages. The order may then have to be modified or terminated for the convenience of the government. See FAR 13.302-4.

Situations In Which Cancellation May Be Necessary, and Steps To Be Taken

Administrative Error

If the initial award of the purchase order was erroneous (e.g., it was awarded to other than the low quoter due to a computation error), the order should be cancelled--provided that the vendor which should have been selected is still able and willing to perform in accordance with its initial quotation. The Purchasing Agent is responsible for determining whether there is a need to

cancel in such a case.

No Further Need

If, after the issuance of a purchase order, the initiator of the requirement determines that the items or services initially requisitioned are no longer needed, the order should be cancelled. The initiator must, however, submit a new requisition cancelling the initial requirement.

The Purchasing Agent must determine whether the vendor has accepted the order. If so, the government may be liable for costs the contractor has already incurred.

If the original order contained a Termination for Convenience clause, the order may be terminated in accordance with its provisions in a situation where the contractor does not concur in the cancellation. See discussion in the subsection which follows. Assistance from a higher level of contracting authority should be sought.

Changed Requirements

If, after the issuance of the purchase order but prior to acceptance, the initiator of the requirement determines that the items or services initially requisitioned do not satisfy the need, the order may have to be cancelled. Although the decision must be made in light of the specific situation, a general rule may be applied: If the substance of the change in requirements could have affected the source selection and if there is sufficient time to reprocur the item or services within the time available for delivery or performance, the order should be cancelled. If either of these conditions is not met, modification of the order is preferred over cancellation.

The decision must be handled differently, however, if the order has been accepted and there is a contract in effect. In that case, the procedures for modification discussed above should be followed. The contractor's agreement to incorporation of the Changes clause should be sought.

Vendor Refusal of an Order

As discussed above, a purchase order is an offer by the government to buy and does not place the vendor under any obligation until the order is accepted. As a consequence, the vendor may refuse any purchase order that is issued.

Acceptance must be an affirmative act of the vendor, but there is no requirement that a vendor specifically refuse an order. Therefore, a provision that an open market order takes effect within a specified number of days unless returned is of *no* legal effect.

If a vendor refuses an order, the order will need to be cancelled and the requirement resolicited unless negotiation with the vendor can resolve the matter.

Who Can Cancel a Purchase Order

Only a CO (an individual with authority to sign an order) can cancel or withdraw a purchase order. *No order, however, should be cancelled without consultation with the initiator of the requirement.* Even where cancellation is considered for administrative reasons, program

personnel must be consulted to ensure that it is possible to meet their needs in a timely manner with another source.

How to Cancel a Purchase Order

All cancellations must be issued in writing using AD-838. The cancellation is prepared in basically the same manner as the original order. The main difference is that it is not necessary to enumerate all items on the order.

Any cancellation statement should state the purchase order number and date, give a brief description of the requirement, and state the reason for cancellation. See FAR Subpart 13.302-4 and the NFC Procedures Manual.

Distribution

The cancellation document should be distributed in the same manner as the original purchase order.

TERMINATION FOR CONVENIENCE

As emphasized in the foregoing subsection, the government may be held liable for payment to the vendor when acceptance has already been made and a contract has been created. Unless the purchase order contains a Termination for Convenience clause, termination would be a breach of contract requiring settlement under general principles of contract law. In the case of a small purchase, the contractor is often willing to accept a no-cost settlement. Nevertheless, the Purchasing Agent must be aware that a contractor can legally demand payment of costs incurred plus the full amount of profit that would have been earned if the contract were carried to completion.

Orders for supplies or services contain a Termination clause (See Exhibit 8B(i)). The clause gives the government the right to terminate when that is in its best interest; it entitles the contractor to payment of costs incurred for performance to date plus a reasonable allowance for profit or deduction for loss. (See FAR Subparts 49.1 and 49.2).

Before invoking the Termination for Convenience clause, every effort should be made to secure a no-cost settlement. If that cannot be reached, the Purchasing Agent should obtain assistance in handling the matter from the PAO.

TERMINATION FOR DEFAULT

Termination for default (see FAR Subpart 49.4) is the exercise of the government's contractual right (provided by a contract clause) to terminate, in whole or in part, the contractor's right to proceed because of the contractor's failure or anticipated failure to perform its contractual obligations. *Note:* The Default clause must be incorporated into the Purchase Order on a case-by-case basis since it is not operated by reference on the back of the AD-838.

The Termination for Default clause reads substantially as follows:

The contracting officer, by written notice, may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event the Contractor shall be liable for damages, including the excess of reprocurring similar supplies or services, provided that if (i) it is determined for any reason that the Contractor was not in default or (ii) the Contractor's failure to perform is without his and his subcontractor's control, fault or negligence the termination shall be a termination for convenience.

Termination for default is a complex legal matter involving important government rights to repurchase and charge excess costs and to collect damages in some instances. If a contractor fails to deliver supplies or to perform services within the time specified in an order, fails to perform in accordance with labor clauses or other terms of the order, or fails to make progress, the Purchasing Agent should refer the matter to the PAO if contracting or legal assistance is required.

If the basis for default is failure to deliver or to perform on time, the government is not required to give any notice of failure or of the possibility of default prior to issuing the termination for default notice itself. But if the government fails to enforce the provisions relating to timely delivery or takes any other action that might be construed as a waiver of the delivery or performance date, it must then send a preliminary notice to the contractor, proposing or setting a new date. This preliminary notice should call the contractor's attention to his or her liabilities in the event of default termination and request an explanation of the failure. The notice may invite the contractor in for a conference.

Cure Notice

If a contract is to be terminated for default before the delivery date (failure to make progress), a "Cure Notice" is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the "Cure Notice" should not be issued. The "Cure Notice" may be in the following format:

CURE NOTICE

You are notified that the government considers your.....[specify the contractor's failure or failures] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [or insert any longer time that the contracting officer may consider reasonably necessary], the government may terminate for default under the terms and conditions of the [insert clause title] clause of this contract.

(End of notice)

Show Cause Notice

If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" may be used. It should be sent immediately upon expiration of the delivery period.

SHOW CAUSE NOTICE

Since you have failed to [insert "perform Contract No. within the time required by its terms", or "cure the conditions endangering performance under Contract No. as described to you in the government's letter of(date)"], the government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to [insert the name and complete address of the contracting officer], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the government and the liabilities that may be invoked if a decision is made to terminate for default. Any assistance given to you on this contract or any acceptance by the government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the government to condone any delinquency or to waive any rights the government has under the contract.

(End of notice)

SECTION 13C

FOLLOW-UP PROCEDURES FOR ENSURING TIMELINESS AND ADEQUACY OF DELIVERY OR PERFORMANCE

The process of purchasing on the open market or ordering from an established source is not finished with the issuance of an order. This section addresses procedures which need to be carried out after that step--on a routine and ongoing basis--to ensure that the activity receives what it needs in accordance with the time, quantity, quality, and other conditions set forth in the ordering document. Specifically, the section provides guidelines on:

- @ Follow-up to ensure timely delivery or performance.
- @ Receipt, inspection, and acceptance/rejection procedures to ensure conformance with order provisions.
- @ End-user feedback on the effectiveness of the overall system.
- @ Related matters are covered in other sections, as noted below.
- @ Section 13D discusses the final steps to be taken: processing payments and closing out the purchase file.
- @ Section 13E highlights administration and follow-up steps that are unique to the handling of Federal Supply Schedule delivery orders.

FOLLOW-UP PROCEDURES

Because of a number of factors--the large number of buys, the individual buy's relatively small dollar value, limitations on available time, and so on--follow-up on purchase orders is often given low priority. Yet it is important, especially in view of the total dollars expended in simplified acquisitions, to assure that what is ordered is received within the stipulated time limits. This section addresses the importance of determining what level of follow-up is appropriate and setting up procedures that are effective. It should be noted that, for offices which have implemented them, computerized systems are a highly useful tool for determining the status of any order and obtaining other kinds of information.

Appropriate Level of Follow-Up

Because of the volume of purchase and delivery orders issued, every order cannot receive the same level of follow-up action. Purchasing Agents and the administrative personnel who assist them must use good judgment in deciding when to employ follow-up procedures which consume time and administrative dollars. Follow-up can often be accomplished by a simple phone call. In some cases, however, the Purchasing Agent should arrange for an appointed representative of the requisitioning office to do periodic follow-up and report back to the purchasing activity.

The following are examples of situations which may require relatively extensive follow-up efforts:

- @ The requisitioner has indicated that timely delivery or performance is critical;
- @ The contract calls for services;
- @ The contract calls for construction;
- @ The government has experienced problems with the contractor in the past; and
- @ The acquisition represents the first award by the government to the vendor.

Steps to Take

To follow up on contracts for *supplies*, the purchasing activity should:

- @ Develop a follow-up calendar that indicates the date on which the purchase or delivery order was issued, the final delivery date, and periodic dates for follow-up action; and
- @ Establish a suspense file as a reminder to contact the contractor concerning status, prior to the delivery date.

Purchasing Agents should keep requisitioners informed of any difficulties in obtaining deliveries on schedule. When the contract is for services (including construction), it is probably most effective to appoint someone from the requisitioning office to monitor the contractor's performance and report any delays or problems to the purchasing activity immediately. The monitor should make periodic inspections to verify that the contractor is complying with the statement of work, and that performance is on schedule and within budget.

All contacts with vendors should be made only at reasonable intervals and should be conducted in a straightforward, businesslike manner.

Standard Follow-Up Letters

A standard follow-up letter may be used for supply orders. The letter should be designed for insertion of an individual purchase/delivery order number and signature by the appropriate CO. It may contain a section for completion and return by the vendor (indication that shipment has been made/is to be made; shipment date, point, and carrier; reason for delay; and signature).

Sample text for the follow-up letter is shown at the end of the section as Exhibit 13C(i).

Lost Orders

If a vendor reports that an order was not received or has been lost, a duplicate order should be issued. It should be marked "DUPLICATE COPY" in bold letters and should state that the government will not be responsible for duplicate shipment or delivery.

Orders Placed F.O.B. Shipping Point

When an order is placed F.O.B. shipping point on a government Bill of Lading, the Purchasing Agent may need to trace a shipment with the transportation company engaged to handle it.

RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION

This section provides procedures for receiving goods, inspecting them for conformance with requirements and for damage or defect, and handling their acceptance and rejection. More guidance can be found in the FAR Parts 46.4, 46.5, and 46.6, AGAR Part 446.6. For simplified acquisitions using the AD-838 Purchase Order, the form is used to document receipt, inspection, and acceptance of supplies or services as discussed below.

Receiving and Inspection

Receiving and inspection of small purchases usually takes place at destination--i.e., at the government facility designated as the receiving point (see FAR 13.101(a)(3) and FAR 46.404). In order to maintain the integrity of the procurement and contracting process, avoid the appearance of a conflict of interest, and the purposes of internal controls, and separation of duties, it is important that Purchasing Agents do not sign for the receipt and acceptance of goods and services. Therefore, it is ARS policy that Purchasing Agents shall not sign for the receipt and acceptance of goods or services for which they signed the purchase order.

Routine Receipt and Inspection for Supplies

When items are delivered to the correct destination, the ARS guidelines for receiving and inspecting shipments should be followed.

- @ The person who receives the goods should sign the delivery ticket, indicating receipt and recording the date of receipt. The ticket should be matched with the receiving copy of the purchase order or other receiving document.

- @ In most cases, detailed examination or testing will *not* be necessary. The goods should be examined as follows:
 - *Quantity.* A physical count should be made to compare quantity received with quantity ordered. Where variation in quantity is authorized by the purchase order, variation within the limits authorized will be accepted. Where variation is not provided for but is standard industry or commercial practice, variation in quantity not exceeding 10 percent may be accepted, provided that funds are available. Payment shall, in either case, be based on actual quantity received. This quantity must be recorded in the receiving document.

- *Type and kind.* Visual examination should be made to see that the goods conform to specifications, including exact stock number and model number. (The term "or equal" used in solicitations is not applicable to deliveries; the item furnished must be the specific item ordered.) The inspection may include measuring and weighing.
- *Packaging and labeling.* If applicable, visual inspection for conformity with these requirements should be conducted.
- *Operability.* If applicable, a check may be made to see that an item performs or operates as required.
- *Damage or defect.* A general check should be made for dents, tears, and other signs of damage. Any visible or discoverable damage or defect must be noted on the delivery ticket. Established procedures must be followed in reporting the damage and handling the matter with the supplier. Any necessary monetary adjustment must be made through issuance of a modification by the CO. See "Acceptance or Rejection," below.

Detailed Technical Inspection

Detailed technical inspection procedures are necessary in such circumstances as the following:

- @ Special or unusual specifications are involved;
- @ Defective supplies are likely to harm personnel or equipment; and
- @ Defective supplies may cause significant loss of time or significant increase in costs.

If the goods are purchased repetitively from the same source and there are grounds for relying on the source's integrity, inspection may be made only occasionally.

Any necessary testing should be carried out promptly. Only the testing criteria spelled out in the order may be used.

"Inspection" for Services

In the case of services, including construction, inspection involves adequate monitoring of progress during performance as well as assurance that the product or result satisfies requirements.

Acceptance or Rejection Conformance

Where the service performed or the product supplied is determined to be in strict accordance with the specifications, receiving personnel may accept it and certify it for payment.

Deviation or Substitution

Receiving personnel other than the Purchasing Agent do not have authority to waive any requirement, to accept any deviation or substitution, or to make any adjustment. They may, however, reject any substantial deviation.

If a deviation is considered minor and acceptance is considered to be in the government's interest, the Purchasing Agent must resolve the matter. A CO has authority to waive minor deviations and negotiate price adjustment in the government's interest. Substitutions which are suitable for the use intended may be accepted by the CO when time does not permit replacement and when a suitable adjustment in price can be negotiated. The file must be completely documented. Where the purchase order is based on a written contract, the acceptance or rejection of nonconforming deliveries must be governed by the contract terms.

Rejection for Nonconformance

When all or any part of the materials delivered fail to meet specifications, they may be rejected. The contractor must immediately be informed of the rejection and the precise reasons for it. The contractor should be informed that the materials are being held at its risk, awaiting its instructions as to disposition.

It is usually in the government's best interest that contractors be given an opportunity to correct or replace nonconforming supplies or services within the contract schedule and without additional cost to the government. Rejected materials must be removed at the contractor's expense. The contractor must pick up the goods or accept their return, paying all shipping costs. When material is returned to the contractor an itemized receipt should be obtained and filed. If a contractor refuses to remove or accept the return of materials which have been properly rejected, the CO may arrange for their disposal in accordance with FPMR 101-43.3.

ARS GUIDELINES ON RECEIVING AND INSPECTING SHIPMENTS

The following are the ARS guidelines on receiving and inspecting shipments. Actions to be taken by the Purchasing Agent under specific circumstances are described below.

Discrepancies in and/or Damaged Shipments from GSA

For FEDSTRIP deliveries from GSA or Department of Defense, the procedures contained in the GSA publication, National Customer Service Center Reporting Guide (See Section 5E and Appendix I of this Manual). Discrepancies may also be reported by telephone on GSA's National Help Line at 1-800-488-3111.

Discrepancies in Shipments From Supply Sources Other than GSA

As discrepancies in shipments are reported, they must be processed as follows:

For Overages Shipped FOB Destination

- @ If the overage is an item that can be used, and funds are available, amend the purchase order or contract to increase the quantity and cost to cover the overage.
- @ If the overage cannot be used, or funds are not available, make arrangements with the vendor/contractor for the return of the item(s).

For Shortages Shipped FOB Destination

- @ If the carrier's shipping documents agree with the quantity delivered, but the shipment is not complete, contact the vendor/contractor and attempt to obtain the missing item(s).
- @ If the carrier's shipping documents do not agree with the quantity delivered, notify the vendor/contractor of the shortage and request that he/she contact the delivering carrier.

For Overages Shipped FOB Origin

- @ If the overage can be used, see "Overages Shipped FOB Destination" above.
- @ If the overage cannot be used, or funds are not available, notify the vendor/contractor of the overage and request that the vendor/ contractor make arrangements for the return of the overage at his/her expense.

For Shortages Shipped FOB Origin

- @ If the carrier's shipping documents agree with the quantity delivered, but the shipment is not complete, contact the vendor/contractor and attempt to obtain missing item(s).
- @ If the quantity delivered is less than the quantity delivered as shown on the carrier's shipping documents, contact the delivering carrier to ascertain when the missing item(s) will be delivered.
- @ If the shortage is the result of a packing problem by the vendor/contractor, contact them and request the missing item(s).

Damaged Shipments From Supply Sources Other Than GSA

As damaged shipments are reported, they must be processed as follows:

Deliveries with Visible Damage Shipped FOB Destination

- @ Immediately contact the delivering carrier and request an inspection of the damaged shipment.
- @ Notify the vendor/contractor of the damaged shipment and inspection by the delivering carrier. Follow the instructions from the vendor/ contractor and/or the delivering carrier regarding the repair or replacement of the damaged shipment.

Deliveries with Concealed Damaged Shipped FOB Destination

- @ Immediately notify the vendor/contractor of the concealed damage, giving details as to the extent of the damage and request repair or replacement of the damaged item(s).
- @ Follow the instructions of the vendor/contractor regarding the repair or replacement of the damaged item(s).

Deliveries with Visible Damage Shipped FOB Origin

- @ Contact the delivering carrier and request an inspection of the damaged shipment, and request that the shipment be repaired, if possible, or replaced by the carrier.
- @ Follow the instructions of the carrier regarding the repair or replacement of the damaged shipment.

Deliveries with Concealed Damage Shipped FOB Origin

- @ Contact the vendor/contractor and give the nature and extent of the damage. If the damage was not the result of mishandling by the carrier, request that the vendor/contractor repair, or replace the damaged shipment.
- @ If the damage was the result of mishandling by the carrier, contact the carrier and request that the damaged shipment be repaired or replaced.

Shipments Not Meeting the Specifications From Supply Sources Other Than GSA

When shipments are received that do not meet the specifications as set forth in the purchase order or contract, proceed as follows:

- @ Check the specification information provided by the consignee against the specification in the purchase order or contract.
- @ If the specifications do not agree, contact the vendor/contractor and give the correct specification information, and request that the proper item(s) meeting specifications be sent.
- @ Follow the instructions of the vendor/contractor for the return of the item(s) that do not meet the specifications.

DISPUTES

The Purchasing Agent should make every effort, consistent with protecting the government's interest, to resolve any dispute which may arise over government nonacceptance of delivered items. However, when a dispute cannot be resolved amicably, the matter should be referred to the next higher contracting authority--usually the PAO--for disposition.

Remember, in any of the circumstances described above you should make and keep documentation of all conversations with all parties involved. Things that should be included in the documentation are names of persons talked to, dates, what was discussed, actions to be taken and by whom, agreements, or lack thereof, and any other information that may be useful in resolving the problem. In the case of damaged shipments it may be useful, if possible, to obtain photos of the damaged shipment.

END USER FEEDBACK SYSTEM

In addition to maintaining routine procedures for follow-up and for inspection and acceptance, the purchasing activity should establish a communications vehicle which brings requisitioners' and end users' views to bear on the functioning of the overall acquisition system.

This "end user feedback system" is intended to permit end users to:

- @ Express their views on the adequacy of supplies and services furnished;
- @ Recommend changes in specifications and standards related to the items being furnished;

- @ Recommend new or improved items for inclusion in the supply system; and
- @ Express their views on the adequacy and timeliness of support provided by acquisition personnel.

The system should be designed to in turn provide feedback to the end users regarding the actions taken as a result of their suggestions and complaints.

Suggestions may be submitted informally, but complaints should be submitted by letter or memo. The Head of the purchasing activity should review the system annually and make any necessary changes.

Suggested operating procedures for such a system are summarized in the chart on the next page.

Suggested Procedures For End User Feedback System

Person Responsible	Actions
Requisitioner of Other End User	<p>Prepare a letter explaining briefly the basis for the suggestion or describing the cause for complaint. Include a recommendation for improvement or correction.</p> <p>Send original to official providing service.</p>
Purchasing Agent	<p>On receipt of letter, review to determine action to be taken. Determine if action is within scope of own responsibility</p> <ul style="list-style-type: none"> @ If within scope, implement suggestion or satisfy complaint @ If not within scope, refer letter to Area PAO. <p>Notify end user by letter (original) of action taken. File copy of letter.</p>
Area Procurement Assistance Officer	<p>On receipt of letter, review to determine action to be taken, and to determine if action is within scope of own responsibility.</p> <ul style="list-style-type: none"> @ If within scope, implement suggestion or satisfy complaint. @ If not within scope, consult with the Director, PPD. <p>Notify end user by letter (original) of action taken. File copy of letter.</p>
Director, PPD	<p>On receipt of letter, review to determine action to be taken and if action is within scope of responsibility.</p> <ul style="list-style-type: none"> @ If within scope, implement suggestion or satisfy complaint. @ If not within scope, refer letter to Director, Office of Procurement, Property and Emergency Preparedness (USDA) for final review and action. @ Notify end user by letter (original) of action taken.

Exhibit 13C(i)
Sample Text For Body Of A Follow-up Letter

This office has been informed that shipment of the merchandise covered by the above-cited purchase order was not made in time to reach the consignee by the date specified in the purchase order.

Please advise this office, of the status of the order. If the shipment has been made, give the date and method of shipment. If the shipment has not been made, indicate in your reply the date on which you propose to make shipment and the reason for the delay.

This letter does not waive the government's rights to inspection where "Inspection at Source" has been stipulated in the purchase order.

In order to avoid unnecessary correspondence, or cancellation of the order, your reply should reach this office on or before _____ .

Sincerely yours,

(Purchasing Agent or
other Contracting Official)

SECTION 13D

PAYMENT AND CLOSEOUT

The purchasing/ordering process is completed with two steps: payment to the contractor and closeout of the purchase file. The Purchasing Agent is responsible for assuring that these actions are taken. This section provides broad guidelines; bureau or office instructions should be consulted and followed.

PROCESSING OF PAYMENTS

Basic Procedure

Following receipt, inspection, and acceptance, the paper work which documents a purchase action (receiving report) must be assembled, signed by the person or persons responsible in the receiving office, and forwarded to the National Finance Center (NFC). The finance office will match this receiving report with the contractor's invoice and the purchase order and will issue a payment check.

Payments should be processed expeditiously in fairness to vendors, in order to take advantage of prompt payment discounts, and to meet the requirements of the Prompt Payment Act (See the Prompt Payment Clauses at FAR 52.232-25 and FAR 52.232-27).

Problem-Solving Measures

It often happens that vendors are not paid promptly, or that duplicate payments are made by the finance office. The causes of these problems and potential remedies for them are discussed below.

Late Payment

1. Vendors do not include their company name and address on their invoices. (Example: Goods are purchased from a small store whose owner uses an invoice that is not preprinted with the store's name and address.)
Remedy: Include in each purchase order a copy of the notice shown as Exhibit 13D(i) at the end of the section.
2. The NFC receives invoices directly from a vendor with whom a blanket purchasing agreement (BPA) has been made, or from a vendor with whom a purchase order-invoice-voucher has been used.
Remedy: Vendors should be told to send invoices to the office that placed the order. The ordering office must then certify receipt of the item or service and forward the invoice to the NFC.

3. The NFC office receives a purchase order invoice for payment before getting the receiving report.
Remedy: A receiving report must be sent to the NFC office as soon as the goods or services are received.
4. The ordering office accumulates invoices and sends several at one time to the finance office, creating an uneven workload that delays payment.
Remedy: Invoices should be forwarded as soon as they are received.

Duplicate Payment

1. An ordering office places a verbal request for goods or services with a vendor and follows up with a purchase order. The vendor sends an invoice to the NFC office when the verbal order is received and again when the purchase order is received.
Remedy: If you place a verbal order and subsequently issue a confirming purchase order, make sure the purchase order states that it confirms a verbal order and that shipment and invoicing may have already occurred.
2. The ordering office certifies an invoice on a blanket purchase agreement or open market purchase, then sends a second certification when an overdue notice is received from the vendor.
Remedy: Upon receiving an overdue notice, check with the NFC to see if payment has in fact been made. If payment has not been made, rectify the invoice, mark it "original," and attach a brief note to the finance office asking them to determine if payment has been made before processing the invoice.

CLOSEOUT

Closeout of any government contract is basically a task of gathering together all documents which serve as evidence that required procedures have been followed throughout the acquisition process, and that the contract was completed (or terminated) and the contractor paid. Proper contract closeout thus depends on proper record-keeping throughout the acquisition process, including the maintenance of records on what was bought, the method used, the competition received, and the evaluation and selection source. Although such paper work often seems dull and unnecessary, the requirements for record-keeping result from legitimate management needs and from the requirement to be accountable to the public. The task of recollecting and justifying actions taken is always easier when those actions have been documented properly. Spending the time needed to prepare and manage records is well worth the effort.

The following list presents items that should be present in the purchase file, as applicable, to provide an "audit trail" of what was done.

- @ Requisition document and any attachments;
- @ Certificates;
- @ Justifications (noncompetitive acquisition, etc.);

- @ Copies of waivers or exemptions;
- @ Multiple-award breakdown and salient characteristics matrix;
- @ Record of competition obtained;
- @ Determination of reasonableness of price;
- @ Acknowledgment from vendor;
- @ Record of follow-up action;
- @ Copy of receiving report; and
- @ Copy of payment report.

Individual completed files should be maintained until they can be disposed of in accordance with FAR Subpart 4.8.

Exhibit 13D(i)
Sample Notice For Inclusion In Purchase Orders

NOTICE TO VENDOR

To ensure prompt payment for your goods/services:

@ Send the original and two copies of your invoice to:

(insert name and full address of office
to which the invoice is to be submitted)

@ Make sure your invoice contains the following information:

- Name of your company or organization
- Purchase order number
- Address to which payment check is to be mailed
- Telephone number (include area code)
- Name and location of the ARS employee who placed the order

SECTION 13E

SPECIAL PROCEDURES FOR THE ADMINISTRATION OF DELIVERY ORDERS PLACED WITH FEDERAL SUPPLY SCHEDULE CONTRACTORS

As noted in previous sections of this chapter, delivery orders placed under Federal Supply Schedule contracts and other indefinite delivery or term contracts are governed by provisions contained in the basic contract. As a result, some of the administrative measures that may be taken in delivery order administration differ from those used for open market purchase orders. For example, while purchase orders may not contain the termination for default provisions (FAR 49.504(a)(1) permits their use), most delivery orders may be so terminated.

This section describes the major procedures and issues which are unique to the administration of Federal Supply Schedules. Further guidance may be obtained by referring to the FAR 8.4, provisions of the Schedules themselves and to the GSA guide entitled *National Customer Service Reporting Guide*.

FUNDAMENTAL RIGHTS AND RESPONSIBILITIES

Each Federal Supply Schedule contract establishes the rights and obligations of the parties in accordance with its terms. The parties--the activity and the contractor--each have a right and an obligation to adhere to the terms of the contract. The terms may either be incorporated by reference citing the clause title and date, or by including the full text of the clause.

The ordering activity may cancel an order or terminate a contract for various reasons provided for in the clauses, even though it did not itself write the basic contract. Administrative changes may be made, and substantial modifications effected, by means of clauses contained in the contract.

Once the delivery order is accepted by an FSS contractor, the Purchasing Agent who placed the order has overall responsibility and authority with respect to the order. She or he must be familiar with the provisions of the contract and must see that they are followed.

This next subsection outlines actions to be taken in regard to specific issues and problems.

Inspection Prior to Acceptance

Inspection and acceptance of supplies ordered from FSS schedule contractors is normally conducted by the consignee at destination unless (1) the schedule provides otherwise or (2) the schedule item is covered by a product description and the ordering office determines that GSA's inspection assistance is needed. In the case of destination inspection and acceptance, the receiving office (the consignee) would inspect the supplies and notify the ordering office of any discrepancies. The ordering office has the right to reject the delivery and require the contractor to repair or replace the defective items at no additional cost to the government.

Where the schedule provides for origin inspection, the inspection will be conducted by the GSA Regional Office in the region from which the shipment is made. Where the ordering office determines that it needs inspection assistance from GSA the request is submitted by sending two copies of the delivery order to the inspector named in the schedule. GSA will then inspect the items and provide the ordering activity with a copy of the Notice of Inspection. If the supplies are found to comply with the specifications, the activity will only need to determine the quantity and condition of the items upon receipt. If the supplies do not conform, however, GSA will reject the shipment. If the contractor will not correct the deficiency or replace the shipment, GSA will notify the ordering activity, recommending whether it should accept the items at a reduced price or whether it should terminate for default (see discussion below).

If the supplies delivered are defective but still meet the functional need, the ordering activity may accept them at an equitable reduction in the contract price. It is the responsibility of the ordering officer to negotiate any such reduction with the contractor. If the nonconforming supplies are not repaired, replaced, or accepted at a price reduction, within the delivery schedule, the order may be terminated for default.

Delinquent Performance

If the contractor fails to deliver within the period specified in the contract (or within a shorter period as agreed on and documented prior to placing the order), the ordering officer may either grant the contractor an extension of the delivery schedule (with appropriate consideration) or terminate for default (as discussed below). If there is an attempt to assess excess costs for procurement and the contractor protests and claims that the failure to perform was due to an excusable cause, the appropriate GSA office should be notified.

Termination for Default By the Ordering Activity

In accordance with FAR 8.405-5, if a contractor fails to meet the conditions of a delivery order which has been properly placed under the contract, the ordering activity may terminate the delivery order for default. Before terminating, however, it should be clear that such action will be in the activity's best interest. If no other supplier can provide the item, or if the need is urgent and no other supplier can deliver earlier, termination is not the correct course of action. There are several other options for dealing with defective products or nonperformance.

Ordinarily, where the contractor has failed to deliver on time or failed to meet the ordering office's quality requirements the ordering officer should first notify the contractor in writing that default is being considered and that, if satisfactory performance does not occur within a specified time (which would allow a reasonable time for performance), the delivery order will be terminated for default and the contractor held liable for any excess costs resulting from purchasing the supplies or services elsewhere. This notice (called a show cause) should be sent with sufficient time for response allowed.

If the activity decides not to grant the contractor the additional time to perform satisfactorily, or if the contractor still fails to do so, the activity may make the purchase elsewhere (repurchase) in a manner which minimizes the difference between the price that would have been paid to the

defaulted contractor and the new price that has to be paid. The activity should then assess the defaulted contractor damages in the amount of the excess costs. The damages may be collected by check or in the form of a reduction (set-off) of payments owed to the contractor under other delivery orders or contracts. The ordering officer must be sure to notify the GSA office executing the contract of any default action. Also, copies of all repurchase orders, except the copy furnished to the commercial concern from when the repurchase was made, must contain the notation "Repurchase against the account of _____ under Delivery Order Number _____ under Contract Number _____."

If no set-off is available and the contractor refuses to pay assessed excess costs within 60 days of the date of final payment to the new replacement contractor, the ordering officer must send a report to the GSA office that executed the original contract. The report may be in letter form. It must include complete information on both the terminated delivery order and the replacement order (see 8.405-5(a)(5)). If there is no available offset, GSA will refer the matter through channels to the General Accounting Office for collection.

By GSA

GSA may elect to terminate an entire contract (as opposed to an individual delivery order) for default. If this action is taken, no further orders may be placed with the defaulted contractor. Orders must be placed with a replacement contractor or in another manner directed by GSA.

FOLLOW-UP ACTION

After placing an order, the ordering activity must follow up with the consignee to ensure proper receipt and satisfaction. If there are discrepancies or deficiencies in shipments or materials, the activity is responsible for documenting the problem and reporting it to GSA. The procedures to follow are set forth in the GSA publication entitled *National Customer Service Reporting Guide*.